

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

HB CONSTRUCTION, INC.,

Plaintiff,

v.

Civil Action No. 1:17-cv-1132

TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA,

Defendant.

NOTICE OF REMOVAL

Defendant Travelers Property Casualty Company of America (“Travelers”), through its attorneys, Gordon & Rees LLP, submits this Notice of Removal to the United States District Court for the District of New Mexico pursuant to 28 U.S.C. §§ 1332, 1441, and 1446.

BACKGROUND

1. Plaintiff’s Complaint was filed in the Second Judicial District Court of Bernalillo County, New Mexico, Cause No. d-202-cv-2017-06415. Exhibit A. Plaintiff asserts claims for, *inter alia*, breach of contract, bad faith breach of insurance contract, unfair trade practices, and negligence. *See id.*, *generally*.

2. Travelers was served with the Second Amended Complaint through the Office of Superintendent of Insurance on October 13, 2017. *See* Affidavit of Service, Exhibit B.

3. This Notice of Removal is filed within thirty days of October 13, 2017 as required by 28 U.S.C. § 1446(b).

VENUE AND JURISDICTION

4. The United States District Court for the District of New Mexico embraces Bernalillo County, the county in which the state court action is now pending. *See* 28 U.S.C. § 111. Thus, this case is properly removed to this Court pursuant to 28 U.S.C. § 1441(a).

5. This Court has subject matter jurisdiction under 28 U.S.C. § 1332(a) because (1) there is complete diversity of citizenship between Plaintiff and Defendant; (2) the amount in controversy exceeds \$75,000, exclusive of interests and costs; and (3) all other requirements for removal have been satisfied.

I. DIVERSITY OF CITIZENSHIP

6. Complete diversity exists in this matter. Plaintiff and Defendant are citizens of different states.

7. For purposes of diversity jurisdiction, a corporation is “a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business” 28 U.S.C. § 1332(c)(1).

8. Plaintiff HB Construction, Inc. is a New Mexico Corporation with its principal place of business located in Albuquerque, New Mexico. (Ex. A at ¶ 1). Accordingly, Plaintiff is a citizen of New Mexico.

9. Defendant Travelers is a Connecticut corporation with its principal place of business in Connecticut. (Ex. A at ¶ 2). Accordingly, Defendant Travelers is a citizen of Connecticut.

10. Therefore, complete diversity exists among the Plaintiff and Defendant.

II. AMOUNT IN CONTROVERSY

11. The amount in controversy exceeds \$75,000.00. Plaintiff states in its Second Amended Complaint that it is demanding \$567,828.00 in addition to attorneys' fees and punitive damages. (Ex. A at ¶ 14).

III. ALL OTHER REMOVAL REQUIREMENTS ARE SATISFIED

12. Removal is timely. Defendant Travelers was served on October 13, 2017, less than 30 days before this Notice of Removal is being filed. *See* Affidavit of Service, Exhibit B.

13. Furthermore, this removal is being filed less than one year after this action was commenced in state court. Thus, this removal also complies with the timeliness requirements of 28 U.S.C. § 1446(c)(1).

14. Travelers has not appeared or otherwise responded to the Complaint in the State Court Action.

15. Pursuant to 28 U.S.C. § 1446(d), this Notice of Removal has been sent to all other parties in this action and has been filed with the state court clerk's office. Also, within twenty-eight days of the filing of this Notice of Removal, Travelers will file "legible copies of records and proceedings from the state court action" as required by D.N.M.LR-Civ. 81.1. No hearing has been set in the State Court Case.

16. Pursuant to 28 U.S.C. § 1446(a), a copy of all process, pleadings, and orders served upon Travelers are also submitted.

CONCLUSION

WHEREFORE, Travelers hereby removes this action from the Second Judicial District Court in the County of Bernalillo, New Mexico to the United States District Court for the District of New Mexico.

DATED this the 10th day of November, 2017.

/s/ Kenneth J. Ferguson

Kenneth J. Ferguson, Esq.

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Travelers Property Casualty

Company of America

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the above and foregoing was electronically filed with the Clerk of the United States District Court using the CM/ECF system and a copy has been services upon counsel of record via U.S. Mail, this the 10th day of November, 2017 addressed to:

Via Certified Mail

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/s/ Kenneth J. Ferguson

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